IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9182 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECUTIVE ENGINEER (O & M) - Petitioner(s)

Versus

KANJIA MANSUKHLAL TRAMBAKLAL - Respondent(s)

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Appearance :

NOTICE NOT RECD BACK for Petitioner(s) : 1,MR SN SINHA for Petitioner(s) : 1,
MR PH PATHAK for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 23/12/2005

CAV JUDGMENT

1.By filing this petition, the petitioner has challenged the judgment and award passed by the Presiding Officer, Labour Court, Jamnagar dated 24.07.1998 in Reference

(LCJ) No. 370 of 1990 (Old Reference (LCR) No.1089 of 1986), by which the Labour Court has directed the petitioner to reinstate the respondent – workman on his original post without back wages.

2. It can be noticed from the record that the respondent – workman was engaged in October, 1984 by the petitioner for temporary period of NMR basis and as a part of electrification programme in the rural area. The respondent – workman has worked from 6.5.1984 to 16.10.1985 and as per the say of the petitioner, the respondent has completed totally 185 days in a calender year.

3. It is the case of the petitioner that as there is no work, the respondent was not called for and ultimately the respondent has initiated conciliation proceedings through his advocate demanding permanency on the basis of the work done in the division.

4. It can be noticed from the record that since the conciliation proceedings were failed, the failure report was made by the Conciliation Officer and reference was made to the Labour Court, Rajkot on 17.2.1986, which came to be numbered as Reference (LCJ) No. 370 of 1990 (Old Reference (LCR) No. 1089 of 1986).

5. The Labour Court, after appreciating the evidence on record and after hearing both the sides, by its

judgment and award dated 24.07.1998 directed the petitioner to reinstate the respondent – workman on his original post without back wages. The Labour Court has come to the conclusion that it can be presumed that the respondent – workman has completed 240 days in a year since the petitioner has failed to produce the muster roll though the same was available with the petitioner and, therefore, the respondent – workman was required to be retrenched after making the seniority list as per the provisions of Section 25(F) of the Industrial Disputes Act. The Labour Court has come to the conclusion that the petitioner has not followed the provisions of the Industrial Disputes Act and, therefore, there is a clear breach of the provisions of the Industrial Disputes Act, more particularly, the provisions of Section 25(F) as well as Section 25(G) of the Act.

6. It is submitted by Mr.S.N.Sinha, learned advocate appearing for the petitioner that the Labour Court has mechanically come to the conclusion that the workman has completed 240 days and, therefore, his services were terminated in violation of Section 25(F) of the Act. Relying upon the judgment of the LPA Bench in the case of Executive Engineer (Mechanical) V/s Chetan P Oza, reported in 2005(2) GLR 1778, Mr.Sinha has

submitted that the condition precedent is that the workman should show and prove to the satisfaction of the authority that during a period of 12 calender months preceding the date with reference to which calculation is to be made, he had worked for 240 days. He, therefore, submitted that there is no breach of the provisions of Section 25(F) of the Act and, therefore, the approach of the Labour Court is illegal and the impugned judgment and order is required to be quashed and set aside. He has also placed reliance on the decision of the Honourable Apex Court in the case of Manager, R.B.I., Bangalore Vs. S.Mani and others, reported in 2005 LLR 737 and submitted that it is for the workman and not the employer to prove, by evidence and not merely relying upon the pleadings, that they had completed 240 days' service in the preceding one year of their termination. He further submitted that if the respondent – workman is relieved on account of non-availability of work, it cannot be said that it is a case of retrenchment and, therefore, the workman is not entitled for retrenchment compensation and the notice period. He submitted that when NMR system was completely stopped by the Head Office, there is no question of reinstatement because the respondent – workman was not employed on clear and vacant post. He,

therefore, requested to quash and set aside the impugned judgment and award.

7. On the other hand, Mr.P.H.Pathak, learned advocate appearing for the respondent – workman has opposed this petition and has tried to justify the order passed by the Labour Court. He submitted that the respondent – workman has completed 240 days in a year and, therefore, there is a breach of the provisions of Section 25(F) of the Act. He submitted that NMR employees are engaged and continued for permanent nature of work and as per the GSO-446 NMR rules on completion of 960 days of service are decided to be absorbed by creating supernumerary post. Mr.Pathak has placed reliance on the decision of the Honourable Apex Court in the case of Samishta Dube Vs. City Boad, Etawah and anohter, reported in 1999(1) Scale 655 and has submitted that the burden of proof is on the employer to justify the deviation. It is therefore, requested to dismiss the present petition.

8. Heard the learned advocates for the parties and perused the material placed on record.

9. It is not in dispute that the respondent – workman had worked from 6.5.1984 to 16.10.1985. It is required to be noted that the petitioner had not produced the muster roll and wage bill before the Labour Court and,

therefore, the Labour Court has drawn the inference that the respondent – workman has completed 240 days in a year. Section 25(F) of the Act would apply to a case where the workman has been in a continuous service for not less than one year and if that fact is proved, such workman cannot be retrenched by the employer until the conditions provided in clauses a, b and c of Section 25(F) of the Act are satisfied. Admittedly, in the present case, the respondent – workman has not completed 240 days during a period of 12 calender months preceding the date with reference to which calculation is to be made and since the respondent has failed to prove that he had worked for 240 days, his service would not be deemed to be continued service. It is required to be noted that the judicial review of the findings of the Labour Court becomes necessary when the Labour Court has wrongly placed burden of proof upon the employer instead of the workman to establish 240 days' working in preceding 12 months.

10. Considering the judgments referred to herein above and in view of the aforesaid discussion, I am of the view that the Labour Court was not justified in granting relief in favour of the respondent and, therefore, the impugned judgment and award passed by the Labour Court is required to be quashed and set aside.

11.In the result, this petition is allowed. The impugned judgment and award dated 24.07.1998 in Reference (LCJ) No.370 of 1990 (old Reference (LCR) No.1089 of 1986) is quashed and set aside. Rule is made absolute to the aforesaid extent. No costs.

(SHARAD D DAVE, J)

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